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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 GENUINE ENABLING TECHNOLOGY
10 LLC.,

11 Plaintiff,

12 v.

13 NINTENDO CO., LTD. and NINTENDO OF
14 AMERICA INC.,

15 Defendants.

CASE NO. C19-351 RSM

ORDER DENYING STIPULATED
MOTION FOR PROTECTIVE ORDER

16 This matter comes before the Court on the parties' Stipulated Motion for Protective Order.
17 Dkt. #78.

18 The Court finds that the proposed Protective Order does not conform to the requirement
19 that its "protection from public disclosure and use extends only to the limited information or
20 items that are entitled to confidential treatment under the applicable legal principles" as required
21 by Local Rule 26(c)(2). Under the section entitled Confidential Material, the Court's Model
22 Protective Order instructs: "[t]he parties must include a list of specific documents such as
23 'company's customer list' or 'plaintiff's medical records;' do not list broad categories of
24 documents such as 'sensitive business material.'" *See* Dkt. #78-2 at 3.

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26 Parties listed the following materials as "confidential":
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1 [I]nformation (regardless of how it is generated, stored or maintained) or tangible
2 things that qualify for protection under Federal Rule of Civil Procedure 26(c). Such
3 information shall include commercial information that is not publicly known and is
4 of technical or commercial advantage to its possessor, in accordance with Fed. R.
Civ. P. 26(c)(7), or other information required by law or agreement to be kept
confidential.

5 Dkt. #78-1 at 3. “Information or tangible things that qualify for protection under Federal Rule
6 of Civil Procedure 26(c)” and “other information required by . . . agreement to be kept
7 confidential” are overbroad categories too likely to include materials not entitled to confidential
8 treatment. Furthermore, parties’ reference to Rule 26(c)(7) is in error. *See generally* Fed. R.
9 Civ. P. 26(c). Though the Court presumes parties intended to cite Fed. R. Civ. P. 26(c)(1)(G)
10 regarding protection of trade secrets, the point warrants clarification. Likewise, parties have
11 listed the following materials as “highly confidential”:

12 [E]xtremely sensitive CONFIDENTIAL Material, disclosure of which to another
13 Party or Non-Party would create a substantial risk of serious harm that could not be
14 avoided by less restrictive means. Such information shall include but is not limited
15 to trade secrets, confidential research and development, any non-public financial,
16 technical, marketing, pricing and revenue information, and any other sensitive trade
secret information.

17 Dkt. #78-1 at 4. “Non-public financial, technical, marketing, pricing and revenue information”
18 is similarly overbroad and too likely to include materials not entitled to highly confidential
19 treatment.

20 The parties justify this departure from the Model Protective Order’s guidelines on the
21 basis that “the circumstances of the case required the parties to make multiple changes to the
22 Model Protective Order.” Dkt. #78 at 2. This explanation fails to justify the parties’ changes.
23 For this reason alone, the Motion will be denied.
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1 Having reviewed the briefing, along with the remainder of the record, the Court hereby
2 finds and ORDERS that the parties' Stipulated Motion for Protective Order (Dkt. #78) is
3 DENIED.

4 DATED this 11th day of July 2019.

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7 RICARDO S. MARTINEZ
8 CHIEF UNITED STATES DISTRICT JUDGE
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